IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 190 of 1989
WITH
INCOME TAX REFERENCE No 192 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

MOHMEDHUSAIN JAMALBHAI

Appearance:
MR AKIL QURESHI FOR MR MANISH R BHATT
for Applicant.
MR RK PATEL FOR MR KC PATEL for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

COMMON JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The following question has been referred by the Income Tax Appellate Tribunal, Ahmedabad Bench "B" under section 256(2) of the Income Tax Act,1961 (hereinafter referred to as the Act :

"Whether, the Appellate Tribunal has not erred in law and on facts in confirming the view taken by the Appellate Assistant Commissioner that the share of profit from the trust of K.S.Lokhandwala family trust belonged to the trust and not the assessee individual and hence the same cannot be included in the individual assessment of the assessee ?"

2 We have heard Mr.Akil Qureshi for the revenue and Mr.R.K.Patel for the respondent-assessee.

3 The Tribunal has followed its decision in case of one Shri Faridahmed Abdulsameed wherein it was held that share of profit from the firm had to be taxed in the hands of the K.S.Lokhandwala Family Trust and not in the hands of Faridahmed Abdulsameed.

4 However, in case of Faridahmed Abdulsameed(Supra) in Income Tax Reference No.202 of 1986 on 13/8/2001 this Court has declined to answer the question raised in that reference in view of the facts not being clear in the said reference. In light of this position, we decline to answer the question referred in these references.

5 The references are accordingly disposed of with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)
m.m.bhatt